APPEAL NO. 010100

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 11, 2000. The hearing officer held that the respondent's (claimant) injury of _____, included his neck, but not his upper back or left wrist and that he had disability for the period from April 20, 2000, through the date of the CCH.

The appellant (carrier) has appealed, arguing that the claimant has injured his shoulder only and that the opinion of his treating doctor should be disbelieved because that doctor is of a discipline that believes that all ailments emanate from the spine. The carrier further argues that the off-work statements filed by the doctor are not in compliance with the intent of the Legislature and the Texas Workers' Compensation Commission and should therefore be disregarded. The claimant responds that the longstanding doctrine of liberal interpretation of the 1989 Act, as well as the evidence, supports the hearing officer's decision.

DECISION

We affirm the hearing officer's decision.

The hearing officer has comprehensively laid out the evidence which will not be repeated here. We note that it was agreed at the beginning of the CCH that the carrier had accepted liability for a compensable left shoulder injury on _____.

The hearing officer did not err in his findings regarding the extent of injury that the claimant sustained by falling forward on _____. A claimant's testimony alone may establish that an injury has occurred, and disability has resulted from it. Houston Independent School District v. Harrison, 744 S.W.2d 298, 299 (Tex. App.-Houston [1st Dist.] 1987, no writ). Generally, lay testimony establishing a sequence of events which provides a strong, logically traceable connection between the event and the condition is sufficient proof of causation. Morgan v. Compugraphic Corp., 675 S.W.2d 729, 733 (Tex. 1984). Because disability need not be proven only through medical evidence, the hearing officer also did not err by finding disability even though there may have been some technical defects in the treating doctor's off-work slips pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.5 (Rule 129.5) (first effective December 26, 1999). There is nothing in that rule or its preamble which we can construe as reversing longstanding workers' compensation case law or the interpretation to be accorded to it, absent a clear statute requiring medical certification of inability to work before disability for purposes of temporary income benefits may be found. Indeed, we note that nothing in Rule 129.5 itself requires such reports to serve as the exclusive foundation of a finding of "disability." Whether the employer made a bona fide offer of employment that would meet the claimant's restrictions (or whether it could) was not an issue before the hearing officer.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Barnes
Appeals Judge